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 8 Attorneys for Defendants PEERLESS INSURANCE COMPANY, LIBERTY MUTUAL
 9 FIRE INSURANCE COMPANY and GOLDEN EAGLE INSURANCE
 10 CORPORATION

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 13 UNITED STATES DISTRICT COURT
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 15 SOUTHERN DISTRICT OF CALIFORNIA

16	SHAW MORTGAGE)	CASE NO.: 08 CV 0709 BTM AJB
17	CORPORATION dba	)	SDSC Case No. 37-2007-00084451-CU-BC-
18	PATIOSOURCE & THE NATURAL	)	CTL
19	TOUCH, a California Corporation	)	NOTICE OF MOTION AND MOTION
20	 v. PEERLESS INSURANCE	)	TO DISMISS PLAINTIFFS'
21	COMPANY, a New Hampshire	)	COMPLAINT PURSUANT TO
22	Company; GOLDEN EAGLE	)	FEDERAL RULE OF CIVIL
23	INSURANCE CORPORATION, a	)	PROCEDURE 12(b)(6);
24	California Corporation; LIBERTY	)	MEMORANDUM OF POINTS AND
25	MUTUAL INSURANCE COMPANY,	)	AUTHORITIES IN SUPPORT
26	a Massachusetts Company; and DOES	)	THEREOF; DECLARATION OF
27	1 – 20, inclusive,	)	DALE A. AMATO
28	 Defendants.	)	[Per Chambers, no oral argument unless requested by the Court.]

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:
 PLEASE TAKE NOTICE that on June 6, 2008, or as soon thereafter as the matter
 may be heard at the above-captioned court, located at 880 Front Street, San Diego,
 California, 92101, Defendant Liberty Mutual Insurance Company ("LMIC") will move

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1 this court to dismiss Plaintiff's First Amended Complaint against it pursuant to Rule
2 12(b)(6) of the Federal Rules of Civil Procedure, on the following grounds:

- 3 • The First Claim for Breach of Contract fails to state a claim upon which
4 relief can be granted against LMIC;
5 • The Second Claim for Breach of the Implied Covenant of Good Faith and
6 Fair Dealing fails to state a claim upon which relief can be granted against
7 LMIC; and
8 • The Third Claim for Declaratory Relief fails to state a claim upon which
9 relief can be granted against LMIC.

10 This Motion is based upon this Notice of Motion, the accompanying
11 Memorandum of Points and Authorities, the entire court file in this matter, and on such
12 other argument and evidence that may be presented at the hearing on this Motion.

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14 DATED: April 18, 2008

BERGER KAHN
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